

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

Gateway Fashion Mall, LLC, a	)	
Delaware limited liability company,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:09-cv-57
	)	
Jay Fettig et al.,	)	<b>ORDER</b>
	)	
Defendants.	)	

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A hearing was held on December 2, 2009, jointly in Case Nos. 1-09-cv-37 and 1-09-cv-57. The two cases involve similar claims, but not all of the same parties. The court inquired whether an agreement could be reached where all of the claims could be pled in one action with the parties rearranged and adjusted accordingly to avoid the procedural difficulties that have arisen. After some discussion, the hearing was continued to allow the parties to consider an option suggested by the court.

On December 9, 2009, the court continued the hearing by telephonic conference. The parties indicated they had reached a tentative agreement. Based on the agreements reached on the record, the Court hereby **ORDERS** as follows:

1. The plaintiff in case number 1:09-cv-37 shall have until January 8, 2010, to file an amended complaint. Plaintiff may add as additional parties plaintiff the following persons and entities: Gelato d'Italia, LLC; JH Card & Gift Shop, LLC; Jason Fettig; Joseph Vadnais; Insyndio, LLP, and Matt Hill if he chooses to participate. The plaintiff may also make such other amendments to the complaint as deemed

necessary.

2. The Defendants in case number 1:09-cv-37 shall have until January 28, 2010, to file an answer and may plead any counterclaims, cross-claims and third party claims as deemed necessary. In addition, defendants may add Matt Hill as a third party defendant if he is not included as an additional party plaintiff in the new amended complaint.
3. Within 10 days of the filing of the answer to the amended complaint in case number 1:09-cv-37, the parties in case number 1:09-cv-57 shall file a stipulated motion for voluntary dismissal assuming there are no unforeseen problems, which, if there are any, must be raised and discussed with the court.
4. Service on the new parties identified above may be accomplished electronically by service upon the attorneys without the necessity of personal service with the possible exception of Matt Hill, who will need to be personally served if he does not join as a plaintiff in case number 1:09-cv-037 or unless he agrees to waive personal service if he is added as a third party defendant.
5. The scheduling order in case number 1:09-cv-37 is hereby suspended. Once the new pleadings have been filed and the additional parties have been added, the parties shall submit a new scheduling plan for the court's consideration and the court will conduct a new scheduling conference if necessary.
6. In anticipation of a stipulated motion for voluntary dismissal in case number 1:09-cv-57, the court hereby suspends all deadlines in that case.
7. Once the pleadings have been filed in accordance with the foregoing, the pending

motions at Doc Nos. 16 & 19 will be denied without prejudice as being moot with the parties retaining the right to make similar motions or raise similar defenses as the case progresses.

8. If the parties wish to consent to the undersigned's handling of the case for all purposes, new consents must be executed by the attorneys representing all parties including Mr. Hill. Otherwise, the case will be re-assigned to Judge Hovland.

Dated this 10th day of December, 2009.

/s/ Charles S. Miller, Jr.  
Charles S. Miller, Jr.  
United States Magistrate Judge